

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

IN RE:) 19-MD-2875 (RBK-JS)
)
)
) Camden, NJ
VALSARTAN NDMA PRODUCTS) October 10, 2019
LIABILITY LITIGATION) 2:00 p.m.

TRANSCRIPT OF STATUS CONFERENCE
BEFORE THE HONORABLE JOEL SCHNEIDER
UNITED STATES MAGISTRATE JUDGE

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Colloquy

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3 MS. WHITELEY: Good afternoon, Your Honor. This is
4 Conlee Whiteley.

5 THE COURT: Are we the only people on the line, Ms.
6 Whiteley?

7 MS. WHITELEY: No, Your Honor. I believe there's at
8 least one other person I heard click in.

9 MR. RUBENSTEIN: Hi, Your Honor. This is Brian
10 Rubenstein with Greenberg, Traurig on behalf of the Teva
11 defendants.

14 THE COURT: This is -- this is Judge Schneider. Do
15 we -- do we have on the conference the people who were going
16 to talk on behalf of the plaintiffs' group and the defendants'
17 group?

18 MR. GOLDBERG: Your Honor, on behalf of defendants
19 and -- this is Seth Goldberg.

THE COURT: Great. How about the plaintiffs?

21 MR. GEDDIS: Your Honor, this is Chris Geddis from
22 Mazie, Slater, Katz and Freeman. Adam is just finishing up a
23 deposition I know, but I know that he's going to be on the
24 call.

25 THE COURT: All right. Let's wait a moment.

Colloquy

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1 (Pause in proceedings)

2 THE COURT: Is there anyone else who could speak on
3 behalf of the plaintiffs while we're waiting for Mr. Slater?
4 Mr. Honik?

5 MR. HONIK: Your Honor, I can certainly try. I
6 apologize. I happen to be in my car in between appointments.
7 I alerted my plaintiffs' co-counsel that I might not even be
8 on the call, but I can -- we can certainly, you know, begin
9 the conversation.

10 THE COURT: Okay.

11 MS. WHITELEY: Daniel is also on the phone, Your
12 Honor, as well as I, and we could go forward.

13 THE COURT: Terrific.

14 MR. HONIK: We can.

15 THE COURT: Okay. I have the letters from counsel.
16 Thank you very much. What I'd like to do is to save for the
17 last issue to be discussed the custodian and search term
18 issue. That seems to be the most problematic. So let's --
19 let's save that for last.

20 So I want to go down the issues that are in
21 plaintiffs' letter, start with number two, make sure we cover
22 all the issues in defendants' letter, and then we'll circle
23 back to deal with the custodian and search term issue.

24 Somebody is moving around. Can you -- can you put
25 your phone on mute, please.

Slater - Argument

7

1 MR. SLATER: Hello, Your Honor. I don't know if
2 that was me. It's Adam Slater. I just finished my deposition
3 so I'm on the call. I don't know if that was me, but I
4 apologize.

5 THE COURT: Okay. So just to bring you up to speed,
6 we'll save the custodian and search term issue for the last
7 item to discuss since that seems to be the most problematic.
8 I have the parties' letters.

9 The first issue is the Hetero and Aurobindo
10 corporate representatives. Is it correct that the Hetero
11 issue is moot now? Somebody help me.

12 MR. SLATER: I don't think it's moot on Hetero yet
13 because we're still waiting to confirm service and -- but I
14 think the letter, Your Honor, said that they plan to produce
15 the documents.

16 So if they're producing all the documents, it's moot
17 as to the core discovery documents, if that's what they're
18 offering to produce. But it was unclear whether they have all
19 of the documents that the foreign entities have.

20 THE COURT: I don't know. That was my impression,
21 but is Hetero's counsel on the phone? Mr. --

22 MR. GOLDBERG: Your Honor, this is Seth Goldberg. I
23 understand they are on. Just a reminder that in order to be
24 heard, you have to press star-1 to unmute yourself from this
25 line.

Poletto - Argument

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1 MS. POLETTO: Thank you, Seth. I was desperately
2 trying to figure out how to unmute you. I just hit 1; nothing
3 was happening. I apologize, Your Honor. Yes, it's Janet
4 Poletto. I'm on for Hetero, USA.

5 As I had indicated to Mr. Slater, Hetero, USA, is
6 prepared to produce the remaining core discovery obtaining
7 from Hetero Labs those documents it did not previously have in
8 its possession. The only exception being documents that
9 another defendant in the case has, that being Camber.

10 And I don't know what conversations plaintiff had
11 with Camber or not, but we were prepared to produce remaining
12 core discovery, get whatever we need from India. We have we
13 believe all this at this point in time and are going through
14 it and --

15 THE COURT: Great.

16 MS. POLETTO: -- should be able to produce that by
17 the end of next week.

18 THE COURT: Terrific. Why don't you produce those,
19 and, Mr. Slater, if there's an issue, just let us know so that
20 for the time being we'll just note that it appears subject to
21 confirmation that the Hetero 30(b) (6) deposition on the
22 control issue is not necessary, which leaves us with
23 Aurobindo. I have --

24 MR. SLATER: I'm sorry to interrupt, but there's one
25 piece of that that I want to just make sure we're clear on.

Heinz - Argument

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1 Ms. Poletto said Hetero Labs. I just want to make sure,
2 because there's two Indian entities. One's Hetero Drugs,
3 Limited, and we've been working to serve both of them
4 separately. I'm just curious if they are producing for that.
5 I'm sorry to interrupt. I just wanted to make sure on that
6 one.

7 MS. POLETTO: From my understanding, Adam, there
8 would be no core discovery documents that would be coming
9 directly from Hetero Drugs, but to the extent there are, then
10 we would be obtaining those as well.

11 MR. SLATER: Thank you. Sorry to interrupt.

12 THE COURT: Okay. Is Aurobindo's counsel on the
13 phone?

14 MS. HEINZ: Yes, Your Honor.

15 THE COURT: Are we going ahead with your 30(b) (6)
16 deposition on the control issue?

17 MS. HEINZ: At this time it looks like we are still
18 going forward. I still don't have any updates regarding
19 whether Aurobindo, Limited, has been served. I believe they
20 were served in an Irbesartan case that was dismissed either
21 shortly before or shortly after the MDL was formed, but that's
22 all the information that I have. I'm not aware of them being
23 served yet in this action, in this MDL.

24 So at this point we are still going to proceed with
25 the deposition. I did serve objections and I have been -- Mr.

Heinz - Argument

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1 Slater and I have been conversing on those throughout the past
2 few weeks, hoping to reach an agreement with him on the scope.
3 Obviously, we're looking at the narrow -- related to the
4 documents that we have not produced pursuant to the Court's
5 discovery order.

6 THE COURT: All right. Let me -- let me just step
7 in here. To the extent you don't work out your objections,
8 we're going to address all of those issues next Wednesday at
9 the in-person conference.

10 I briefly looked at your objections, Aurobindo, and
11 let's make something clear. It's understood that the Court
12 identified the core discovery documents that have to be
13 produced. However, the purpose of the 30(b) (6) deposition is
14 to see if the domestic entity has "control" such that it
15 should produce the foreign documents.

16 That document production or request is broader than
17 the core discovery. Plaintiffs are going to need those
18 documents which relate to the control issue in order to make
19 their case. So it wasn't entirely clear to the Court what
20 the nature of the objection was, but if the nature of the
21 objection is, the only documents that have to be produced are
22 the core discovery, that's incorrect. In order to --

23 MS. HEINZ: It's --

24 THE COURT: Okay.

25 MS. HEINZ: I'm sorry, I apologize.

Colloquy

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1 THE COURT: Okay. Let me just finish. In order to
2 get to the answer to the question whether or not there's
3 control, plaintiff is entitled to request relevant documents
4 regarding the control issue which likely are different than
5 the core discovery. I just wanted to make that clear, because
6 I wasn't clear from the objections whether or not that was the
7 position Aurobindo was taking.

8 MS. HEINZ: It's a little different from my
9 perspective anyway. The way I'm looking at it is, I view --
10 obviously, the issue is whether they have control of these
11 documents, but that's just it. The way I'm looking at it is
12 it's these documents that the Court ordered pursuant to the
13 core discovery, and the way that their notice was phrased was
14 very broad.

15 It seemed like they were asking, you know, about
16 control of any documents. So I just wanted to make sure that
17 we were focused on, you know, the core discovery that we
18 didn't produce and control over that information.

19 THE COURT: Well, we'll hash out all of these issues
20 next Wednesday. You know the Court's position with regard to
21 this 30(b)(6) issue.

22 I think it's a distraction. I think it's -- I
23 regret that we're going through it and -- and taking time from
24 the crux of the case to get to this control issue. But if
25 that's the position your client takes, the Court has no

Colloquy

12

1 recourse but to give plaintiff the right to take this
2 discovery. So to the extent there's any disputes remaining
3 regarding Aurobindo's 30(b) (6) deposition, we'll address them
4 and decide them next Wednesday.

5 The next issue, the macro -- the macro discovery
6 issue. I would really like to finalize this issue next -- by
7 next Wednesday. I want to identify the -- what I call the
8 macro or big picture issues that we need to address in order
9 that the parties can sharpen their pencils with regard to the
10 custodian and search term issues.

11 I saw that defendants took a stab at it. If the
12 parties can meet and confer on this issue before next
13 Wednesday, I'd like to leave next Wednesday with a final list
14 of the -- of these issues we have to address. We'll agree
15 upon a briefing schedule and get those discovery issues
16 decided promptly.

17 With regard to defendants' letter, certainly some of
18 them are self-explanatory, but the Court is going to need more
19 help when there's sort of a general issue about the scope of
20 relevant testing. We need to be more specific, you know, are
21 we talking about time frame? Are we talking about countries,
22 et cetera, et cetera?

23 So the parties are going to be asked to brief these
24 issues so we could be able to specifically identify the issues
25 that we have to tee up and decide. So that'll be another

Slater - Argument

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1 issue that will be on the agenda for next Wednesday, and we
2 hope to finalize that list next Wednesday and get a briefing
3 schedule as well.

4 Can you update the Court on the fact sheets?

5 MR. SLATER: On the defendants' fact sheets, Your
6 Honor, frankly, it's our -- it's completely on the plaintiffs.
7 I think that we just have not gotten it done because we
8 focused so much on the meet and confer process with the --
9 with the custodians issue, and we owe that to them, and we're
10 going to try to get that to them by tomorrow by the end of the
11 day. But it's on us, we acknowledge that, and we need to get
12 it to them.

13 THE COURT: Okay.

14 MR. SLATER: They had -- they had sent us a red line
15 and a re-drafting of it and we have to get back to them.

16 THE COURT: Okay. The ball's in the plaintiffs'
17 court, and hopefully we'll get that soon.

18 General discovery requests, I guess responses or
19 objections rather are due October 15, and we'll see what
20 happens.

21 Third-party fact sheets, I guess that's in
22 defendants' court?

23 MR. RUBENSTEIN: Hi, Your Honor. This is Brian
24 Rubenstein with Greenberg Traurig. So we actually sent a
25 revised draft to the plaintiffs on October 4th, and we were

Rubenstein - Argument

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1 hoping to meet and confer this week I think, you know, as Mr.
2 Slater said, I think the meet and confer process on the
3 custodians probably got in the way.

4 But, you know, I think there's only just a few
5 limited issues that we need to discuss, and we should be able
6 to hopefully resolve those by next week's in-person
7 conference.

8 MR. SLATER: I agree, Your Honor. I've been told by
9 the people who represent the TPPs that they're very -- it's
10 very close and there aren't a lot of differences, but we'll
11 get back to them by tomorrow with our response if it hasn't
12 already happened, which it sounds like it didn't.

13 THE COURT: All right. Sounds good.

14 Mr. Slater, I don't know if you or Mr. Goldberg can
15 answer this, but you saw on the docket there was a bunch of
16 motions for extensions that were filed. I hope there's a way
17 that we can short-circuit this rather than having to decide
18 whatever it is 20 or 30 or 40 similar-type motions. I don't
19 quite understand what the issue is and why all of the sudden
20 this issue came up.

21 MR. SLATER: I'm not sure either, Your Honor.

22 I'm making an assumption that it might be the
23 deadline to file a short form complaint, and I'm thinking that
24 there -- whether or not there would be a request by Mr.
25 Goldberg or a defendant for an extension to answer, so if

Slater - Argument

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1 that's the issue, I would just suggest maybe we can enter into
2 some sort of an order to give people a little more time, if
3 that's -- if it's reasonable and just get them done and tell
4 everybody's don't, you know, don't keep filing these motions
5 or try to get them all done within a period of time.

6 But I don't know the specific circumstances. Those
7 people haven't contacted certainly myself, so I wasn't aware
8 of the issue existed until Your Honor forwarded those -- those
9 notices, which I'm sure is not fun for the Clerk's Office to
10 have to deal with.

11 THE COURT: It looks like they were all filed by
12 this Kentucky counsel. Can someone from your group contact
13 this Kentucky counsel and see if there's a way that will
14 short-circuit this?

15 MR. SLATER: Absolutely.

16 THE COURT: Okay. Thank you very much.

17 I don't know, is Optum in the case and United Health
18 Group in the case? It looks like they're asking for an
19 extension of time to serve those defendants.

20 MR. SLATER: I'm assuming they were named in their
21 complaint, Your Honor. I haven't read their complaint, but
22 I'm assuming that they named them.

23 THE COURT: Were they in the case before?

24 MR. STANOCH: Yes. Your Honor, this is David
25 Stanoch for plaintiff. OptumRX has a mail order pharmacy and

Stanoch - Argument

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1 is named in the Master Complaints which were filed in June,
2 but I think that was the first time they were added to the
3 action at that time. So they should be here, and we did
4 effect service on them for the MDL, but I'm not sure of the
5 specific situation with this case, but we can look into it.

6 THE COURT: Much appreciated. So hopefully we'll
7 have an update by next Wednesday.

8 All right. Before we get to the custodian and
9 search term issue, are there any other issues to address on
10 this call? Okay. Sounds like none.

11 Obviously, we're getting different versions of what
12 happened at the meeting, not surprising, but I was encouraged
13 by Mr. Goldberg's letter which indicates that steps are being
14 taken to move forward on this issue.

15 One suggestion I have and I don't know if you
16 already have this in place is, one thing that occurs to the
17 Court that makes this a little complicated is we have
18 different defendants that have to be dealt with. I don't know
19 exactly how many, somewhere between five and eight I guess.

20 If it hasn't been done, I think it would be very
21 helpful if the plaintiffs could identify one attorney who is
22 the lead contact for each of the defendants. So, for example,
23 every defendant doesn't have to go through Mr. Slater or some
24 other plaintiffs' counsel. There would be one plaintiffs'
25 attorney who is -- who is taking the lead with regard to each

Slater - Argument

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1 of the defendants, so that that defendant would know the one
2 person it should go to to communicate. Has that been done,
3 and if it hasn't, do you see any reason why it shouldn't be
4 done?

5 MR. SLATER: We haven't done that in a formal sense,
6 but I think that as a de facto matter it's been happening.
7 Because, for example, after the meeting or during the closing
8 of the meeting on Monday, we had an agreement with the
9 defendants to get a time to speak to them, and different
10 attorneys from our group have engaged with the defendants.
11 And I would assume that those attorneys who were on those
12 calls with those particular defendants, would continue to
13 run point for those discussions that have began. So I think
14 as a de facto matter that basically is occurring at this
15 point.

16 THE COURT: Okay. So from the defendants'
17 perspective, you're all on the phone. Do each of you know who
18 your primary point of contact is?

19 MR. TRISCHLER: Good afternoon, Your Honor. This is
20 Clem Trischler for the Mylan defendants.

21 I have been -- the answer to your question is yes.
22 We have had conferences as recently as today. I think Layne
23 Hilton and Marlene Goldenberg have been the primary folks that
24 we've been dealing with, but I certainly know whom to talk to
25 on plaintiffs' side to keep the lines of communications

Goldberg - Argument

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1 moving. And that -- you know, that works so far from our
2 perspective. Discussions have been productive and are moving
3 forward.

4 THE COURT: Okay. Good. Does that go for all of
5 our defendants?

6 MR. GOLDBERG: Seth Goldberg for ZHP and -- myself,
7 Barbara Schwartz and Alex Waleko are the people taking the
8 lead on this for us. And we have also been in contact with
9 Layne Hilton since the October 7th meeting to follow up, and
10 we will reach out to Layne with the follow-up information that
11 we're going to be getting based on that meeting.

12 THE COURT: All right. It sounds like things are
13 moving along. We'll address where we are with regard to each
14 of the defendants at next Wednesday's conference.

15 From the Court's perspective, as I said in my email,
16 we want to give the parties an opportunity to try and work
17 this out amongst themselves. We insist that the parties act
18 in good faith which I think they're doing. It absolutely,
19 positively has to be a collaborative process, because if it's
20 not, it'll never get done.

21 If need be, the Court is prepared to order
22 representatives of the defendants to meet informally with the
23 plaintiffs, but before we do that, as we've said, we want to
24 fulfill our commitment to the defendants that the parties
25 first be afforded the opportunity to try and work it out

Colloquy

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1 themselves.

2 So you have another week at this issue. We're going
3 to deal with each of the individual defendants next Wednesday.
4 I would prepare to be here all day on Wednesday because we
5 have some important issues to deal with, and you could also
6 use the facilities of the courthouse while you're all here to
7 have separate meetings or altogether. So we'll see where we
8 are next Wednesday, what additional work has to be done.

9 This is one of the -- if not, the most important
10 issue that we have to deal with in the case. It's going to
11 set the groundwork for the entire ESI production. My feeling
12 is, having done this many, many times in practice and on the
13 bench that the more time we invest in the short term to get
14 this right the more time and money we save in the long term.

15 No one is going to convince me otherwise, but it's
16 in the defendants' best interest to have as fulsome an ESI
17 production as possible. It's much cheaper and more efficient
18 and less cumbersome to do it one time rather than to have to
19 go back and do it again. So I strongly encourage the parties
20 to continue to work together in good faith in the
21 collaborative process to work out the custodians and search
22 terms that have to be set.

23 If it means we have to order production of
24 organizational charts, of course, we'll do that. I mean,
25 that's just -- I don't know why we need an order to do that.

Colloquy

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1 Another issue you have to discuss is the translation
2 issue if these documents are going to be in a foreign
3 language. I don't know if we're going to have the same
4 problem we had in Benicar where each side had to get their own
5 translator to -- because of differences in translation, but
6 these are the type of issues we -- we should work out now,
7 because come December, this all has to be finalized and
8 starting the new year, that's when the defendants are going to
9 have to do their search.

10 So there's not a whole lot of time to get all this
11 done, so I commend the parties and encourage the parties to
12 continue their diligent efforts to try and reach some sort of
13 an agreement. And we'll find out next Wednesday where we
14 stand. I don't know if there's anything else we can add on
15 this issue except encouraging the parties to continue to meet
16 and confer and that's all I have to say about the issue.

17 Anyone else have anything to add?

18 MR. SLATER: Your Honor, it's Adam Slater.

19 The only thing I would add is in the context of the
20 macro discovery issues, I think that these discussions with
21 the defendants are helping to let us know what issues may
22 exist. And I think that -- I know we want to try to get it
23 done by next week, but I have a sneaky suspicion that when we
24 get the defendants' responses to our -- our document requests,
25 that they will probably, through that process, many issues

Colloquy

21

1 will come up.

2 So we obviously will do what we can to get you the
3 issues that we have by next week. But my expectation is that
4 in the discussions we may learn that there are some other
5 macro-type issues that become more -- more focused.

6 For example, just looking at their letters today
7 from ZHP, there's -- there seems to be an issue about the
8 relationship between ZHP and their U.S. entities and the true
9 nature of it and what their function is. And it seems to be
10 that there's something about that corporate organization that
11 they're putting up as some sort of an objection or -- or a
12 segmenting of discovery, so I don't know if that's going to
13 continue to be an issue.

14 It's just an example that jumped out at me reading
15 the document today, but I just wanted to flag that for the
16 Court that we're probably still a little bit early in our
17 educational process on the plaintiffs' side to know what
18 really is at issue.

19 THE COURT: Mr. Slater, it's unfortunate the way the
20 timing worked out, that the conference is the 16th, and the
21 responses are due the 15th, but we'll deal with it and if you
22 need a little bit more time, we'll deal with it. We'll get it
23 done.

24 MR. SLATER: Thank you, Judge.

25 THE COURT: All right. Anything else for the

Colloquy

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1 plaintiffs? And anything else for the defendants?

2 MR. GOLDBERG: No, Your Honor.

3 THE COURT: All right. Thank you, counsel. Have a
4 good day and we're adjourned.

5 MR. SLATER: Thank you.

6 (Telephone conference concluded at 2:30 p.m.)

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C E R T I F I C A T I O N

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I, Lois A. Vitarelli, court approved transcriber,
certify that the foregoing is a correct transcript from the
official electronic sound recording of the proceedings in the
above-entitled matter.

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October 24, 2019

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